

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 11, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1687

Cir. Ct. No. 2012JV1050

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

**IN THE INTEREST OF LAMONT C., A PERSON
UNDER THE AGE OF 17:**

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

LAMONT C.,

RESPONDENT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: MICHAEL J. DWYER, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Lamont C. appeals the juvenile delinquency adjudication, following an admission of guilt, to one count of being a party to a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12).

crime of robbery. Lamont C. also appeals the order denying his motion to suppress. We affirm.

BACKGROUND

¶2 On October 2, 2012, Lamont C. was charged, pursuant to a delinquency petition, with one count of armed robbery with use of force, as a party to a crime. The charges stemmed from the September 30, 2012 armed robbery of M.R. According to the delinquency petition, M.R. was robbed at gunpoint while standing at a bus stop at 53rd Street and West Keefe Avenue, Milwaukee, at approximately 11:15 p.m. M.R. told police officers that while at the bus stop, three individuals wearing black hoodies approached him. One of the individuals pulled out a handgun, while the other two pushed M.R. to the ground and punched and kicked him. While M.R. was on the ground, the individuals took M.R.'s wallet and cell phone. M.R. told police that the individuals noticed a police squad car in their vicinity and ran eastbound towards the 53rd Street Community School. Officers searched the area and observed Lamont C. coming out from the east side of the school building. The complaint describes Lamont C. as wearing "a dark, blue hooded sweatshirt," and noted that his demeanor was consistent with someone who "had just finished running." Lamont C. was arrested and charged.

¶3 Lamont C. filed a motion to suppress all evidence resulting from his arrest, alleging that he was illegally and unconstitutionally stopped, searched, and arrested. The circuit court held a hearing on Lamont C.'s motion.

All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

¶4 At the hearing, the arresting officer, Steve Hoffman, testified that on the night of September 30, 2012, he was on patrol in a marked squad car on West Keefe Avenue. At approximately 11:15 p.m., Hoffman was flagged down by a man near 53rd Street, who told Hoffman that he (M.R.) “was just robbed by three younger black males wearing dark hooded sweatshirts.” M.R. told Hoffman that the robbers ran eastbound towards a school following the robbery. Hoffman stated that M.R. flagged him down within one to two minutes of the robbery.

¶5 Hoffman testified that he and his partner, Officer Michael Smith, immediately checked the area and noticed a “younger black male emerge from the east side of the school building.” Hoffman stated that the individual (Lamont C.) was dressed in a dark blue hooded sweatshirt and black pants. Hoffman testified that the school building is approximately two blocks from where M.R. flagged him down. Hoffman stopped Lamont C. and noticed that Lamont C. was breathing heavily, as though Lamont C. “definitely was running.”

¶6 Hoffman further testified that he asked Lamont C. where he was coming from and why he had been running. Lamont C. stated that he was coming from his home and denied that he was running. Hoffman stated that he placed his hand on Lamont C.’s chest to feel his heart rate and noted that Lamont C.’s heartbeat was rapid, consistent with someone that “had just been doing some sort of exercise such as running.” Immediately thereafter, Hoffman placed Lamont C. in the squad car.

¶7 The circuit court denied Lamont C.’s motion, stating:

To me the key to this is that the robbery, the alleged robbery, happened within one to two minutes of the officer encountering the victim. In other words, this is almost as it happens. And under those circumstances obviously if the officers want to have any opportunity of finding the

perpetrators in the area, they can't spend a long time talking to the victim, they got to get a general idea of what's going on and check the area. That's a very reasonable way to proceed in this case.

And so Lamont shows up in the vicinity. That's important because it's immediately adjacent to the time of the alleged incident.

The most important identifier, two identifiers given by the victim in that short term are age, race, and that they're wearing black hoodies.

Lamont is wearing a black hoodie in the vicinity within minutes of an armed robbery. I believe that gives the officer reasonable suspicion that criminal activity is afoot.

¶8 The circuit court further found that based on Lamont C.'s "heavy breathing," "rapid heart rate," and denial that he was running, the arrest was justified.

¶9 Lamont C. entered an admission to being a party to a crime of robbery with the threat of force.² He was adjudicated delinquent and placed under juvenile court supervision. This appeal follows.

DISCUSSION

¶10 On appeal, Lamont C. argues that the circuit court erroneously denied his motion to suppress because: (1) Hoffman lacked reasonable suspicion to stop Lamont C.; (2) Hoffman did not have probable cause to search Lamont C. by checking Lamont C.'s heart rate; and (3) Hoffman did not have probable cause to arrest Lamont C. We disagree.

² The State amended the armed robbery charge to robbery.

¶11 When reviewing a circuit court’s denial of a motion to suppress evidence, this court will uphold the circuit court’s findings of fact unless they are clearly erroneous. *State v. Eason*, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. Applying the facts to the constitutional standards is a question of a law, which is subject to *de novo* review. See *State v. Guzman*, 166 Wis. 2d 577, 586, 480 N.W.2d 446 (1992).

¶12 The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution both require that all searches and seizures be reasonable. *State v. Ziedonis*, 2005 WI App 249, ¶13, 287 Wis. 2d 831, 707 N.W.2d 565. “‘The essential question is whether the action of the law enforcement officer was reasonable under all the facts and circumstances present.’” *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990) (citation omitted).

¶13 An investigatory stop is constitutional if a law enforcement officer, in light of his or her training and experience, has a reasonable suspicion that an unlawful activity has been committed, is being committed, or is about to be committed. See *State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729. The officer must have more than an “inchoate and unparticularized suspicion or ‘hunch.’” *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (citation and quotation marks omitted). The standard of reasonable suspicion is met when “those facts known to the officer at the time of the stop [are] taken together with any rational inferences, and considered under the totality of the circumstances.” *State v. Washington*, 2005 WI App 123, ¶16, 284 Wis. 2d 456, 700 N.W.2d 305.

¶14 We conclude under the facts in this case that Hoffman did have reasonable suspicion and probable cause to stop and arrest Lamont C. Hoffman, relying on information provided to him by a robbery victim, located Lamont C. within minutes of the robbery. In the limited time Hoffman was able to speak with the victim, Hoffman obtained information about the robbers' ages, race and clothing. Lamont C.'s age, race and clothing matched that information. Furthermore, Hoffman found Lamont C. emerging from the east end of the school building within walking distance of the robbery—the same location M.R. gave police when describing the direction in which the robbers ran. Based on the totality of the circumstances, we conclude that Hoffman put forth “specific articulable facts and [drew] reasonable inferences from those facts, that [Lamont C.] [was] violating the law.” See *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623.

¶15 We also conclude that Hoffman had sufficient probable cause to arrest Lamont C. To make a warrantless arrest, a police officer “must have evidence that would lead a reasonable officer to believe that defendant probably committed an offense. It is only necessary that the information available to the officer leads him or her to conclude that guilt is more than a possibility.” *State v. Wheaton*, 114 Wis. 2d 346, 349-50, 338 N.W.2d 322 (Ct. App. 1983) (internal citations omitted), *overruled on other grounds by State v. Pham*, 137 Wis. 2d 31, 403 N.W.2d 35 (1987). As stated, Lamont C. fit the description provided by the robbery victim, was found within blocks of the robbery, and was found very shortly after the robbery. Moreover, Hoffman testified that Lamont C.'s demeanor was consistent with someone who had been running—something Hoffman considered relevant both because the victim stated that the robbers ran after noticing a squad car and because Lamont C. denied running. Under the totality of

the circumstances, we conclude that Hoffman had reasonable suspicion to believe that Lamont C. was one of the three men that robbed M.R.³

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

³ We do not address Lamont C.'s argument that Hoffman lacked probable cause to place his hand on Lamont C.'s chest to check his (Lamont C.'s) heart rate. In light of the totality of the circumstances, Hoffman had probable cause to place Lamont C. under arrest regardless of whether he checked Lamont C.'s heart rate.

